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United States Attorney

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14 v.)
15)
16 ALBERT J. BERGONZI, CHARLES W.)
McCALL, and JAY LAPINE,)
17 Defendants.)
18

No. CR 00-0505 MJJ

VIOLATIONS: 18 U.S.C. § 371 –
Conspiracy; 18 U.S.C. §§ 1341 and 1343 –
Mail and Wire Fraud; 15 U.S.C. §§ 77q(a),
77x, 78j(b), 78m, 78ff and 17 C.F.R.
240.10b-5, 240.13b2-1 – Securities Fraud;
18 U.S.C. § 2 – Aiding, Abetting and
Willfully Causing

SAN FRANCISCO VENUE

19
20 SECOND SUPERSEDING INDICTMENT

21 The Grand Jury charges:

22 I. BACKGROUND

23 A. The Companies

24 1. Prior to January 12, 1999, McKesson Corp. (“McKesson”) was a corporation
25 headquartered in San Francisco, California. McKesson was the largest healthcare supply
26 management company in the United States.

27 2. Prior to January 12, 1999, HBO & Company (“HBOC”) was a corporation
28 headquartered in Alpharetta, Georgia, an Atlanta suburb. HBOC manufactured and sold

1 information technology products, primarily software, to customers in the health care industry.
2 HBOC was the largest health care information technology company in the United States.

3 3. On January 12, 1999, McKesson acquired HBOC, and the merged company became
4 known as McKessonHBOC. McKessonHBOC's headquarters were in San Francisco, California.
5 The portion of the company formerly known as HBOC became a wholly-owned subsidiary of
6 McKesson, continued to have its base in Alpharetta, Georgia, and operated as the Information
7 Technology Business of McKessonHBOC.

8 4. Following the acquisition, shareholders of McKesson and HBOC became shareholders
9 of McKessonHBOC.

10 5. HBOC, McKesson, and McKessonHBOC were publicly traded companies. HBOC's
11 stock was traded on the national market of the National Association of Securities Dealers'
12 Automated Quotation System ("NASDAQ"), an electronic trading system. The stock of
13 McKesson and McKessonHBOC was listed on the New York Stock Exchange ("NYSE"). The
14 companies had shareholders located throughout the United States, including in the Northern
15 District of California. Executives and employees from both companies, including McCALL,
16 regularly communicated with stock analysts throughout the United States, including in the
17 Northern District of California, regarding, among other things, their financial results and future
18 prospects.

19 6. As public companies, HBOC and McKessonHBOC were required to comply with the
20 regulations of the United States Securities and Exchange Commission (the "SEC"). Those
21 regulations are designed to protect members of the investing public by, among other things,
22 ensuring that a company's financial results are accurately recorded and disclosed to the public.

23 7. Under SEC regulations, HBOC and McKessonHBOC had a duty to: (a) make and
24 keep books, records and accounts that fairly and accurately reflected the company's business
25 transactions; (b) devise and maintain a system of internal accounting controls sufficient to
26 provide reasonable assurances that the company's transactions were recorded as necessary to
27 permit preparation of reliable financial statements; and (c) file with the SEC such reports as the
28 SEC may prescribe, including, but not limited to, quarterly reports on Form 10-Q.

1 8. At all times relevant to this Second Superseding Indictment, HBOC's outside auditor
2 was Arthur Andersen LLP ("Arthur Andersen"). McKesson's and McKessonHBOC's outside
3 auditor was Deloitte & Touche LLP ("Deloitte").

4 B. The Defendants

5 9. The defendant CHARLES W. McCALL held several executive positions at HBOC
6 and McKessonHBOC. In January 1991, McCALL joined HBOC as chief executive officer
7 ("CEO"). In February 1998, he became chairman of HBOC's board of directors. On January
8 12, 1999, following the acquisition of HBOC by McKesson, McCALL became the chairman of
9 the board of directors of McKessonHBOC. A special committee of McKessonHBOC's board of
10 directors dismissed McCALL as an employee of the company on June 18, 1999.

11 10. The defendant ALBERT J. BERGONZI held several executive positions at HBOC
12 and McKessonHBOC. From January 1998 until November 1998, BERGONZI was HBOC's co-
13 president and co-chief operating officer ("COO"). He became HBOC's sole president and COO
14 in November 1998. From December 1997 through January 1999, BERGONZI reported directly
15 to McCALL. Following the acquisition, BERGONZI was named corporate executive vice
16 president of McKessonHBOC and president and chief executive officer ("CEO") of the former
17 HBOC operation. A special committee of McKessonHBOC's board of directors dismissed
18 BERGONZI as an employee of the company on June 18, 1999.

19 11. The defendant JAY LAPINE was an attorney for both HBOC and McKessonHBOC.
20 LAPINE joined HBOC in 1994 as an associate general counsel. In 1997, LAPINE became
21 general counsel of HBOC. Following the acquisition, LAPINE became general counsel for the
22 former HBOC operation. A special committee of McKessonHBOC's board of directors
23 dismissed LAPINE as an employee of the company on June 18, 1999.

24 C. Relevant Accounting Rules and Systems of Accounting Controls

25 12. During all times relevant to this Second Superseding Indictment, HBOC and
26 McKessonHBOC were required to and did have internal systems of accounting controls that
27 were designed to ensure that the companies' financial results were reported in conformance with
28 Generally Accepted Accounting Principles ("GAAP") and that revenue was properly recognized.

13. In 1997, HBOC created the Contract Development and Administration (CD&A) group within the finance department. It was the purpose of CD&A to collect all contract documents, including any amendments or agreements modifying contracts. It was part of HBOC's system of internal accounting controls that the sales force was required to send all contract documents to CD&A. CD&A would send the collected contract documents to HBOC's software revenue recognition department where it would be determined whether revenue could be recognized. CD&A also would provide summaries, lists, and copies of contracts to HBOC's outside auditors in connection with quarterly reviews and audits.

14. As public companies, HBOC and McKessonHBOC were required to adhere to GAAP. GAAP included Software Revenue Recognition, Statement of Position 97-2 (Amer. Inst. of Certified Public Accountants 1997) (“SOP 97-2”). SOP 97-2, which became effective for HBOC on January 1, 1998, and for McKesson on April 1, 1998, prescribed requirements for recognizing revenue from the sale of software licenses. Among other requirements, revenue from a sale of software may not be recognized if the sale was subject to a right of return or other contingency, if the sale price was not fixed and determinable, or if collection was not probable. Defendants McCALL, BERGONZI, and LAPINE were familiar with and understood the requirements of SOP 97-2.

II. THE SCHEME TO DEFRAUD

15. Between approximately December 1997 and April 27, 1999, the defendants CHARLES W. McCALL, ALBERT J. BERGONZI, JAY LAPINE, and others, devised and intended to devise a scheme to defraud shareholders of HBOC, McKesson, and McKessonHBOC, the investing public, and the SEC, and to deprive HBOC and McKessonHBOC of their intangible right to the defendants' and other employees' honest services.

1 16. Among the goals of the scheme were:

2 (a) to ensure that HBOC and McKessonHBOC reported that they had met or
3 exceeded projected quarterly results for, among other things, software sales revenue, net income,
4 and earnings;

5 (b) to artificially increase and maintain the share price of HBOC and
6 McKessonHBOC stock;

7 (c) to maintain and increase the defendants' positions in the companies, and to
8 enrich them and others through bonuses, salaries, and stock options; and

9 (d) to make HBOC attractive to other companies, including McKesson, for
10 potential mergers and acquisitions.

11 17. The means by which the defendants and others achieved and attempted to achieve the
12 goals of the scheme included:

13 (a) inflating quarterly software sales revenues by, among other things: (i)
14 recording revenue on contracts that were subject to "side letters" containing contingencies that
15 were concealed from outside auditors; (ii) backdating contracts to record revenue in prior
16 reporting periods; (iii) recording revenue on end-of-quarter "sales" that were actually mere
17 exchanges of cash and inventory; and (iv) recording revenue for sales on which HBOC had
18 secretly guaranteed repayment to a finance company in the event of customer default;

19 (b) making fraudulent entries to company books and records at quarter-end in
20 order to reduce operating expenses and thereby increase net income by whatever amount was
21 necessary to meet quarterly income and earnings-per-share forecasts;

22 (c) making false statements to outside auditors;

23 (d) filing materially false and misleading financial statements with the SEC;

24 (e) making materially false and misleading public statements about HBOC's and
25 McKessonHBOC's financial performance; and

26 (f) making materially false and misleading statements to the SEC in connection
27 with the merger.
28

1 18. It was part of the scheme to defraud that HBOC and McKessonHBOC improperly
2 recognized over \$62 million in earnings for the fiscal year ended March 31, 1998, and over \$266
3 million for the fiscal year ended March 31, 1999. The scheme involved the improper recognition
4 of revenue from over 200 separate contracts with HBOC and McKessonHBOC customers.

5 19. It was part of the scheme to defraud that the defendants McCALL, BERGONZI,
6 LAPINE, and others, regularly met and spoke in person, and corresponded by email and
7 voicemail during quarterly reporting periods to discuss, among other things, the status of
8 software sales for the quarter and to compare the companies' likely quarterly performance with
9 targeted goals. If it appeared that HBOC or McKessonHBOC might fall short of targeted goals,
10 as it did in each of the quarters ending in December 1997 through March 1999, McCALL,
11 BERGONZI, LAPINE, and others, agreed to and did engage in the fraudulent practices described
12 in this Second Superseding Indictment to ensure that those goals were met.

13 Fraud During Quarter Ended March 31, 1998

14 20. It was part of the scheme to defraud that the defendants McCALL, BERGONZI,
15 LAPINE, and others, agreed to engage and engaged in the following improper practices and
16 made the following misrepresentations, among others, during the quarter ended March 31, 1998.

17 21. In or about March 1998, McCALL, BERGONZI, LAPINE, and others met and
18 devised a scheme to inflate HBOC's quarterly revenue and earnings through devices that violated
19 GAAP. Among other things, the defendants agreed to attempt to increase quarterly revenue by
20 closing transactions with side letter contingencies that would not be reflected in the company's
21 books and records or provided to the company's outside auditors. The defendants also agreed
22 that the company would reduce its quarterly expenses by improperly using the company's
23 acquisition reserves and making fraudulent entries regarding the use of those reserves in the
24 company's books and records.

25 22. On or about April 1, 1998, HBOC entered into a \$1.106 million contract with
26 Covenant Health of Knoxville, Tennessee. BERGONZI approved a side letter to the contract,
27 which gave Covenant Health "the unequivocal right to cancel" prior to April 30, 1998. As the
28 defendants agreed, the side letter was separated from the sales contract, and only the contract

1 was forwarded to HBOC's internal accounting department, which was responsible for recording
2 sales revenue. HBOC improperly recorded \$1.106 million in revenue from the sale in the period
3 ended March 31, 1998. Recording revenue on that transaction violated both GAAP and HBOC's
4 own revenue recognition policy.

5 23. During the first two weeks of April 1998, company employees shifted funds from
6 acquisition reserves to a general reserve and then used funds from the general reserve to reduce
7 current expenses. Those entries were in violation of GAAP and had the purpose and effect of
8 artificially reducing quarterly expenses, thereby improperly increasing quarterly net income and
9 earnings per share.

10 24. On April 14, 1998, HBOC issued a press release announcing preliminary results for
11 the period ended March 31, 1998. This press release was reviewed by McCALL, BERGONZI,
12 and LAPINE prior to being issued by the company. In the press release, McCALL falsely
13 represented that the company had a "strong software sales quarter." The defendants knew that
14 the press release was materially false in that, among other things, it included unaudited financial
15 statements that included revenue from transactions that were subject to side letters, reported
16 inflated net income, and represented that the company had "strong revenue and earnings growth"
17 in the quarter.

18 25. On or about May 6, 1998, McCALL and another member of HBOC management
19 signed a "management representation letter" addressed to Arthur Andersen in connection with its
20 quarterly review of HBOC financial statements. The letter included the following materially
21 false representations:

- 22 a. "We have made available to you all financial records and related data."
- 23 b. "There have been no [i]rregularities involving management or employees."
- 24 c. "There are no violations or possible violations of laws or regulations whose
25 effects should be considered for disclosure in the interim consolidated financial
26 statements In all cases, management's actions have complied with the
27 Company's ethical code of standards."
- 28 d. "The accounting records underlying the interim consolidated financial statements
accurately and fairly reflect, in reasonable detail, the transactions of the Company
and its subsidiaries."

1 e. "All agreements with customers have been fully documented, communicated
2 within the company following established procedures and made available to you."

3 f. "The Company's revenue recognition related to its software sales comply with
4 AICPA Statement of Position 97-2 and the latest exposure draft update to SOP
5 97-2."

6 26. In fact, as McCALL knew:

7 a. HBOC had not made available to Arthur Andersen side letters and recourse
8 agreements, and had provided false explanations to Arthur Andersen for entries to
9 HBOC books and records related to revenue, expenses and income;

10 b. management was actively engaged in violating HBOC's accounting procedures,
11 circumventing its system of internal accounting controls, and was directing others
12 to do so;

13 c. management was violating applicable SEC rules and directing others to do so, and
14 was in violation of HBOC's ethical code of standards;

15 d. accounting records failed to reflect side letters and recourse agreements, and the
16 company was improperly using acquisition reserves to "smooth earnings" for the
17 purpose of meeting Wall Street financial expectations;

18 e. side letters, contingencies, and recourse agreements were deliberately concealed
19 from Arthur Andersen at the direction of management; and

20 f. at the direction of management, HBOC was recording revenue in violation of
21 applicable accounting rules, specifically, Statement of Position 97-2.

22 27. On or about May 11, 1998, HBOC filed a report with the SEC on Form 10-Q,
23 reporting its financial results for the quarter ended March 31, 1998. The reported results were
24 materially false in that they included improperly recorded sales revenue, failed to accurately
25 reflect quarterly expenses and net income, and failed to disclose that management had engaged in
26 and directed others to engage in fraudulent accounting practices. Defendants McCALL,
27 BERGONZI, and LAPINE were aware that the company was required to and did file this Form
28 10-Q and each defendant reviewed it prior to the time it was filed. Each defendant knew that the
Form 10-Q contained the material false statements set forth above.

Fraud During Quarter Ended June 30, 1998

25 28. It was part of the scheme to defraud that the defendants McCALL, BERGONZI,
26 LAPINE, and others, agreed to engage and engaged in the following improper practices and
27 made the following misrepresentations, among others, during the quarter ended June 30, 1998.

1 29. It was part of the scheme to defraud that HBOC improperly recognized revenue from
2 approximately 59 contracts for the quarter ended June 30, 1998. McCALL, BERGONZI,
3 LAPINE, and others met during the quarter and discussed the use of side letters and backdating
4 to close contracts and recognize revenue.

5 30. On or about June 30, 1998, BERGONZI and LAPINE caused HBOC to enter into a
6 \$7 million transaction with the University of Pittsburgh Medical Center, of Pittsburgh,
7 Pennsylvania ("UPMC"). The transaction was memorialized in a one-page "Contract
8 Supplement" and was subject to a side letter, signed by BERGONZI, which gave the parties the
9 right to cancel if they could not "flesh out the details of the contract" within 30 days. That
10 period subsequently was extended by a series of additional side letters. The parties finally signed
11 a contract on October 5, 1998. HBOC improperly recorded \$6.99 million from the UPMC
12 transaction as sales revenue for the quarter ended June 30, 1998.

13 31. On or about June 30, 1998, HBOC entered into a contract with Healthcare Imaging
14 Services of Red Bank, New Jersey, which was subject to a side letter. The side letter, which
15 BERGONZI approved, made the sale contingent on approval by the customer's board of
16 directors. HBOC improperly recorded revenue from the sale in the amount of \$1.9 million for
17 the quarter ended June 30, 1998.

18 32. On or about June 30, 1998, BERGONZI approved a side letter to a contract with
19 Holy Cross Hospital of Ft. Lauderdale, Florida, which made the sale contingent upon approval
20 by the customer's board of directors and gave Holy Cross "the unequivocal right to cancel" prior
21 to July 24, 1998. McCALL was involved in the negotiations of this contract and was advised
22 that it was contingent on board of directors approval that would not be obtained until after the
23 end of the quarter. HBOC improperly recorded revenue from the sale in the amount of \$977,034
24 for the quarter ended June 30, 1998.

25 33. On or about June 30, 1998, BERGONZI approved a side letter to a contract with
26 Wellpath Community Health Plans of Chapel Hill, North Carolina, which made the sale
27 contingent on approval by the customer's board of directors. HBOC improperly recorded
28 revenue from the sale in the amount of \$870,000 for the quarter ended June 30, 1998. Wellpath

1 exercised its right to cancel the contract on July 31, 1998.

2 34. On or about June 30, 1998, BERGONZI approved a side letter to a contract with
3 Intra-Coastal Health Systems, Inc. of West Palm Beach, Florida, which made the sale contingent
4 on review by the buyer's counsel and approval by its board of directors. HBOC improperly
5 recorded revenue from the sale in the amount of \$602,000 for the quarter ended June 30, 1998.

6 35. On or about June 30, 1998, BERGONZI approved a side letter to a contract with
7 West Georgia Health Systems of LaGrange, Georgia, which made the sale contingent on "final
8 review" approval by the customer's board of directors. HBOC improperly recorded revenue
9 from the sale in the amount of \$446,350 for the quarter ended June 30, 1998.

10 36. On or about June 30, 1998, BERGONZI approved a side letter to a contract with St.
11 Joseph Hospital of Augusta, Georgia, which made the sale contingent on "final negotiations of
12 the terms and conditions of the agreement." HBOC improperly recorded revenue from the sale in
13 the amount of \$311,002 for the quarter ended June 30, 1998.

14 37. On or about July 4, 1998, in furtherance of agreements between McCALL,
15 BERGONZI, LAPINE , and others, employees of HBOC made fraudulent entries to company
16 books and records by using acquisition reserves to reduce unrelated current expenses. Those
17 entries were in violation of GAAP and had the effect of artificially reducing reported operating
18 expenses and increasing quarterly net income and earnings per share.

19 38. On or about July 13, 1998, HBOC issued a press release announcing preliminary
20 results for the period ended June 30, 1998. This press release was reviewed by McCALL,
21 BERGONZI, and LAPINE prior to being issued by the company. The defendants knew that the
22 announcement was materially false in that, among other things, it represented that the company
23 had "30% revenue growth" in the quarter, attached unaudited financial statements that included
24 revenue from transactions that were subject to side letters, and reported inflated net income.

25 39. On or about June 30, 1998, an officer and general manager of HBOC advised
26 McCALL both orally and in writing that BERGONZI was engaged in overly aggressive revenue
27 recognition practices, including the use of contingent contracts.

1 40. On or about July 20, 1998, McCALL and other another member of HBOC
2 management signed a “management representation letter” addressed to Arthur Andersen in
3 connection with its quarterly review of HBOC financial statements. The letter included same the
4 materially false representations alleged in paragraph 24, above. McCALL knew that the
5 representations were false for the reasons alleged in paragraph 25, above.

6 41. On or about August 3, 1998, HBOC filed a report with the SEC on Form 10-Q. The
7 reported results were materially false in that they included improperly recorded sales revenue,
8 failed to accurately reflect quarterly expenses and net income, and failed to disclose that
9 management was engaged in and directing others to engage in fraudulent accounting practices.
10 Defendants McCALL, BERGONZI, and LAPINE were aware that the company was required to
11 and did file this Form 10-Q and each defendant reviewed it prior to the time it was filed. Each
12 defendant knew that the Form 10-Q contained the material false statements set forth above.

13 Fraud During Quarter Ended September 30, 1998

14 42. It was part of the scheme to defraud that the defendants McCALL, BERGONZI,
15 LAPINE, and others, agreed to engage and engaged in the following improper practices and
16 made the following misrepresentations, among others, during the quarter ended September 30,
17 1998.

18 43. It was part of the scheme to defraud that HBOC improperly recognized revenue from
19 approximately 64 contracts for the quarter ended September 30, 1998. McCALL, BERGONZI,
20 LAPINE, and others met during the quarter and discussed the use of side letters and backdating
21 to close contracts and recognize revenue.

22 44. On September 28, 1998, the defendant BERGONZI and others, caused HBOC to
23 enter into a reciprocal transaction with Computer Associates, an Islandia, New York, maker of
24 business software. Computer Associates agreed to buy \$30 million in HBOC software products
25 for distribution, and, in exchange, HBOC agreed to buy \$73.8 million in Computer Associates
26 software, also for resale. HBOC improperly recorded the \$30 million as sales revenue for the
27 period ended September 30, 1998.

1 45. McCALL, BERGONZI, and LAPINE knew that recognition of revenue on the
2 Computer Associates transaction was improper and took steps to conceal its terms. Among other
3 things, they split the transaction into separate contracts, neither of which made any reference to
4 the other, and BERGONZI signed a separate side letter altering the terms of HBOC's contract
5 with Computer Associates. Computer Associates has neither made use of nor distributed any of
6 the \$30 million in HBOC software products, and HBOC has neither made use of nor distributed
7 any of the \$73.8 million in Computer Associates software.

8 46. On or about September 30, 1998, BERGONZI caused HBOC to enter into a
9 \$10,792,478 software transaction with Baptist Healthcare System, of Louisville, Kentucky
10 ("Baptist Louisville"). BERGONZI signed a one page side agreement that made Baptist
11 Louisville's obligations contingent on the execution of "mutually agreeable documents." HBOC
12 improperly recorded revenue for the sale in the amount of \$10,792,478 for the quarter ended
13 September 30, 1998.

14 47. Between September 30 and October 5, 1998, BERGONZI caused HBOC to enter
15 into five licensing agreements with Baptist Health, of Montgomery, Alabama ("Baptist
16 Montgomery"). The transactions were finalized after the end of the quarter and they were
17 subject to a side letter that gave Baptist Montgomery the right to cancel prior to December 31,
18 1998. HBOC improperly recorded \$3.259 million in revenue for the quarter ended September
19 30, 1998. Baptist Montgomery exercised its right to cancel the contracts in or about April 1999.

20 48. On October 1, 1998, BERGONZI and others caused HBOC to enter into a contract
21 with Staff Builders, Inc., a home health care agency based in Lake Success, New York, which
22 was backdated to September 30, 1998. Under the terms of the agreement, Staff Builders
23 promised to purchase \$9 million in HBOC software, contingent on obtaining financing from
24 General Electric Capital Corporation ("GECC"). When GECC declined to provide financing
25 because of Staff Builders' poor credit rating, BERGONZI, LAPINE, and others allowed HBOC
26 to guarantee repayment to GECC through a "recourse agreement," which precluded revenue
27 recognition.

1 49. Because GECC had not yet finalized its financing contract with Staff Builders, it
2 advanced \$6.9 million to HBOC (the "Bridge Loan"). HBOC had to pay interest to GECC on
3 the Bridge Loan, and was required to return the full loan amount to GECC if Staff Builders did
4 not complete financing arrangements within 60 days. Because GAAP did not permit immediate
5 revenue recognition given the recourse agreement and Bridge Loan, McCALL, BERGONZI,
6 LAPINE, and others concealed those agreements from company books and records, and from
7 Arthur Andersen. HBOC improperly recorded revenue from the Staff Builders contract in the
8 amount of \$9 million for the period ended September 30, 1998.

9 50. On or about September 30, 1998, BERGONZI approved a side letter in connection
10 with a contract with Springhill Memorial Hospital of Mobile, Alabama, which made the sale
11 contingent on "administrative review" and approval by Springhill's board of directors. HBOC
12 improperly recorded revenue from the sale in the amount of \$897,000 for the quarter ended
13 September 30, 1998. Springhill exercised its right to cancel the contract in October 1998, but
14 HBOC extended the cancellation right. On or about December 31, 1998, Springhill canceled the
15 contract.

16 51. In or about early October 1998, BERGONZI approved a side letter in connection
17 with a backdated contract with Sisters of Charity Health Care System of Houston, Texas, which
18 gave the buyer a right to cancel before December 14, 1998. HBOC improperly recorded revenue
19 from the sale in the amount of \$1.746 million for the quarter ended September 30, 1998.

20 52. On or about October 5, 1998, in furtherance of an agreement between McCALL,
21 BERGONZI, LAPINE , and others, employees of HBOC made fraudulent entries to company
22 books and records by using acquisition reserves to reduce unrelated current expenses. Those
23 entries were in violation of GAAP and had the effect of improperly reducing quarterly operating
24 expenses and increasing quarterly net income and earnings per share.

25 53. On October 13, 1998, HBOC issued a press release announcing preliminary results
26 for the period ended September 30, 1998. This press release was reviewed by McCALL,
27 BERGONZI, and LAPINE prior to being issued by the company. The defendants knew that the
28 announcement was materially false in that, among other things, it included improperly recorded

1 revenue and overstated quarterly net income and earnings per share.

2 54. On or about October 15, 1998, HBOC's senior vice president for sales resigned and
3 informed McCALL that he was doing so because BERGONZI was "out of control" and that the
4 sales force was suffering a "revenue hangover" as a result of the use side letters.

5 55. On October 23, 1998, McCALL and other members of HBOC management signed a
6 "management representation letter" addressed to Arthur Andersen in connection with its
7 quarterly review of HBOC financial statements. The letter included same the materially false
8 representations alleged in paragraph 24, above. McCALL knew that the representations were
9 false for the reasons alleged in paragraph 25, above.

10 56. On October 28, 1998, HBOC filed a report with the SEC on Form 10-Q. The
11 reported results were materially false in that they included improperly recorded sales revenue,
12 failed to accurately reflect quarterly expenses and net income, and failed to disclose that
13 management was engaged in and directing others to engage in fraudulent accounting practices.
14 Defendants McCALL, BERGONZI, and LAPINE were aware that the company was required to
15 and did file this Form 10-Q and each defendant reviewed it prior to the time it was filed. Each
16 defendant knew that the Form 10-Q contained the material false statements set forth above.

17 Fraud During Quarter Ended December 31, 1998

18 57. It was part of the scheme to defraud that the defendants McCALL, BERGONZI,
19 LAPINE, and others, agreed to engage and engaged in the following improper practices and
20 made the following misrepresentations, among others, during the quarter ended December 31,
21 1998.

22 58. It was part of the scheme to defraud that HBOC improperly recognized revenue from
23 approximately 161 contracts for the quarter ended December 31, 1998. McCALL, BERGONZI,
24 LAPINE, and others met during the quarter and discussed the use of side letters and backdating
25 to close contracts.

26 59. In October 1998, HBOC and McKesson conducted merger negotiations. On October
27 18, 1998, the companies announced in a press release that they had "signed a definitive
28 agreement for McKesson to acquire HBOC." According to the press release, the merger would

1 “create the world’s first comprehensive healthcare supply management and information solutions
2 company, uniting the top-performing, rapidly growing leaders in their respective industries:
3 McKesson, the #1 healthcare supply management company, and HBOC, the #1 healthcare
4 information company.” In the press release, McCALL falsely stated that HBOC was “currently
5 experiencing strong sales and earnings momentum.” The press release also falsely reported
6 revenue and earnings from HBOC (as pooled with McKesson’s revenue and earnings) for the
7 first three quarters of 1998.

8 60. On November 13, 1998, McKesson filed a Form S-4 with the SEC, which included
9 letters from McCALL discussing the information contained in the document and attachments to
10 the documents. The Form S-4 also included a joint proxy statement/prospectus discussing the
11 proposed merger and the merger agreement between HBOC and McKesson. The Form S-4 also
12 incorporated by reference HBOC’s Forms 10-Q for the quarters ended March 31, 1998, June 30,
13 1998, and September 30, 1998.

14 61. The Form S-4 and the documents incorporated into the Form S-4 contained
15 materially false statements. For example, the merger agreement included a section titled
16 “Representations and Warranties of HBO.” That section contained the materially false
17 representation that HBOC’s financial statements filed with the SEC since 1996 “comply as to
18 form, as of their respective dates of filing with the SEC, in all material respects with applicable
19 accounting requirements and the published rules and regulations of the SEC with respect thereto,
20 [and] have been prepared in accordance with GAAP”

21 62. The Form S-4 also contained *pro forma* condensed consolidated statements of
22 income for McKesson and HBOC for six month periods ending September 30, 1998, and twelve
23 month periods ending March 31, 1998. The statements of income for HBOC included both
24 revenue and income recorded in violation of GAAP.

25 63. On or about November 5, 1998, McCALL signed a letter to Arthur Andersen in
26 which he falsely represented that “Since December 31, 1997, there have been no events or
27 transactions that have a material effect on the financial statements that should be disclosed in
28 order to make those statements not misleading.”

1 64. In January 1999, BERGONZI negotiated a backdated transaction with WebMD that
2 enabled HBOC to record additional revenue for the December 31, 1998 quarter. WebMD agreed
3 to buy \$5 million in HBOC products, and HBOC assumed an obligation to purchase and resell at
4 least \$3.59 million in WebMD products. The contract, which was split into two documents, was
5 signed by BERGONZI on or about January 7, 1999. HBOC improperly recorded \$5 million
6 from the WebMD transaction as revenue for the quarter ended December 31, 1998.

7 65. On or about January 5, 1999, BERGONZI and LAPINE caused HBOC to enter into
8 another transaction with UPMC. Under the terms of the deal, which was memorialized in a
9 “Contract Supplement” backdated to December 31, 1998, UPMC had the option to purchase
10 \$2.4 million in HBOC software products. BERGONZI signed a side letter permitting UPMC to
11 cancel the deal if it decided not to make a purchase by February 3, 1999. The right to cancel was
12 extended by a series of additional side letters. HBOC improperly recorded \$2.323 million from
13 the UPMC deal as revenue for the period ended December 31, 1999. On April 28, 1999, UPMC
14 exercised its right to cancel.

15 66. On or about December 31, 1998, BERGONZI caused HBOC to enter into a \$1.59
16 million transaction with St. Barnabas Hospital of Bronx, New York. The transaction was
17 subject to a side letter, which made it contingent on “finishing legal review and implementation
18 plan of the definitive agreement” within 90 days. HBOC improperly included the \$1.59 million
19 in revenue from the St. Barnabus (Bronx) contract in the period ended December 31, 1998.

20 67. On or about November 10, 1998, BERGONZI cause HBOC to enter into a \$1.994
21 million contract with St. Barnabus Healthcare System of Livingston, New Jersey. The contract
22 was subject to a side letter making agreement contingent on the customer’s “final review and
23 approval” before February 28, 1999. On or about March 31, 1999, BERGONZI approved an
24 extension of the contingency to September 30, 1999.

25 68. On January 25, 1999, McKessonHBOC management held a conference call with
26 securities analysts and issued a press release announcing HBOC and McKesson’s combined
27 results for the period ended December 31, 1998. McCALL and BERGONZI made false
28 statements during the conference call. McCALL stated that HBOC “had very, very strong

1 revenue growth for the year. We exceeded our target at 25% revenue growth last year and during
2 the quarter, I think we had a great deal of success and continue to build our strong base of
3 recurring revenue and outsourcing revenue, as well as Al [BERGONZI] mentioned, significantly
4 increasing our software backlog.” BERGONZI said “operating profit. . . of McKessonHBOC’s
5 information technology business, formerly HBOC, increased 36% for the three months ended
6 December 31, 1998. . . .” In fact, both McCALL and BERGONZI knew that HBOC’s revenue
7 growth for 1998 was not strong, that its publicly-reported revenue included sales that were not
8 booked according to the requirements of GAAP, and that the company’s software backlog had
9 been decreased by the prevalent use of side letters and contingencies to close transactions
10 prematurely.

11 Fraud During Quarter Ended March 31, 1999

12 69. It was part of the scheme to defraud that the defendants McCALL, BERGONZI,
13 LAPINE, and others agreed to engage and engaged in the following improper practices and made
14 the following misrepresentations, among others, during the quarter ended March 31, 1999, which
15 was the first following the acquisition.

16 70. It was part of the scheme to defraud that McKessonHBOC improperly included
17 revenue from approximately 37 contracts for the quarter ended March 31, 1999, when the
18 company released its financial results on April 22, 1999.

19 71. On or about March 31, 1998, BERGONZI caused McKessonHBOC to enter into a
20 \$1 million transaction with St. Barnabas Hospital of the Bronx, New York. The contract was
21 backdated and subject to a side letter, which made it contingent on “finishing legal review and
22 implementation plan of the definitive agreement” within 90 days. McKessonHBOC improperly
23 included the \$1 million in revenue for the period ended March 31, 1999. On or about June 18,
24 1999, St. Barnabus exercised its right to cancel the contract.

25 72. On or about March 23, 1999, BERGONZI approved a side letter in connection with a
26 contract with CHRISTUS Health of Houston, Texas, which gave CHRISTUS the right to cancel
27 the contract. McKessonHBOC improperly recognized \$5.644 million in revenue from this
28 contract for the quarter ending March 31, 1999.

1 73. On or about March 28, 1999, BERGONZI and others proposed a reciprocal
2 transaction to Oracle Corporation, a Redwood Shores, California manufacturer of database
3 products. Under the proposed deal, Oracle would purchase and pay for \$20 million in
4 McKessonHBOC software by March 31, 1999, and McKessonHBOC would agree to buy \$25
5 million in Oracle products in the future, and encourage customers to convert to Oracle's product
6 lines.

7 74. To conceal the true nature of the transaction, BERGONZI and others proposed that
8 the transaction be reflected in two separate contracts. They further proposed that only the
9 contract obligating Oracle to buy \$20 million in software be executed by March 31, 1998, and
10 that Oracle "trust" McKessonHBOC to execute the second contract in the next quarter. Deloitte
11 learned of the proposed transaction and advised BERGONZI and others that revenue from this
12 transaction could not be recognized under GAAP because of its reciprocal nature.

13 75. On March 31, 1999, Oracle declined to enter into the proposed transaction, in part
14 because it had no reason to purchase McKessonHBOC software. As a result, McKessonHBOC
15 failed to meet its software sales revenue goals for the quarter ended March 31, 1999.

16 76. On April 1, 1999, after the end of the March 31 quarter, BERGONZI directed a
17 McKessonHBOC employee to contact Data General Corporation, a Westborough,
18 Massachusetts-based manufacturer of computer hardware, and determine whether it would be
19 willing to enter into a reseller transaction involving approximately \$20 million of
20 McKessonHBOC software that would be backdated to March 31.

21 77. On or about April 2, 1999, at BERGONZI's request, McCALL contacted Data
22 General's chief executive officer who told McCall that any transaction would have to include an
23 agreement in which McKessonHBOC promised to buy back any software that Data General
24 could not resell.

25 78. BERGONZI, LAPINE, and others then negotiated the transaction with Data General
26 throughout the weekend of Friday, April 2, 1999, finalizing the deal on Monday, April 5, 1999.
27 The negotiations resulted in the following agreement: Data General would immediately purchase
28 \$20 million in McKessonHBOC software products, for resale to third parties, and

1 McKessonHBOC would make \$25 million in future purchases of Data General hardware, also
2 for resale. Because Data General had no ability to resell McKessonHBOC products,
3 McKessonHBOC assumed that obligation. If McKessonHBOC failed to resell half the software
4 by July 22, 1999, it would pay Data General \$10 million, less the value of any resales. If it
5 failed to resell the remaining half by September 24, 1999, it would pay Data General another \$10
6 million, again less the value of any resales, and Data General could return all unsold software.

7 79. The documents memorializing the Data General transaction were designed by
8 BERGONZI, LAPINE, and others to conceal various aspects of the deal. Although executed in
9 its entirety on April 5, 1999, the Data General contract was reflected in two separate documents
10 with different dates. The first document, which was backdated to March 31, 1999, purported to
11 be a reseller agreement under which Data General bought \$20 million of McKessonHBOC
12 software for resale. The second document, called an "Amendment," was dated April 5, 1999
13 (the "Amendment"). The Amendment contained McKessonHBOC's obligation to buy \$25
14 million in Data General hardware, to resell its own software on behalf of Data General, and to
15 repay Data General if it failed to do so. The Amendment also included Data General's right to
16 return all unsold software that it purported to buy pursuant to the reseller agreement dated March
17 31, 1999.

18 80. McCALL, BERGONZI, LAPINE, and others concealed the Amendment so that it
19 would not be discovered by Deloitte. On or about April 20, 1999, BERGONZI and LAPINE
20 learned that Deloitte had sent a written audit confirmation request to Data General, asking it to
21 confirm that the \$20 million Software Contract represented the entire agreement between Data
22 General and McKessonHBOC. Thereafter, BERGONZI contacted Data General representative
23 in an effort to delay Data General's response to the confirmation request until after
24 McKessonHBOC announced results for its fiscal quarter and year ended March 31, 1999.

25
26 81. On April 21, 1999, Data General's chief financial officer returned the confirmation
27 request to Deloitte, attaching the Amendment.

28 82. On or about April 22, 1999, McCALL contacted Data General's CEO and asked

whether Data Geneal would restructure the transaction by reducing or eliminating the right to return unsold McKessonHBOC software. Data General's CEO refused McCALL's request.

83. On April 22, 1999, McKessonHBOC issued a press release announcing its preliminary financial results for the reporting period ended March 31, 1999. Deloitte advised McKessonHBOC that it should not include the Data General contract in its financial results because the revenue could not be recognized. The \$20 million from Data General, however, was included in the company's financial results for the period as software revenue for the HBOC subsidiary, allowing McKessonHBOC to report earnings per share in excess of Wall Street forecasts. In the press release, McCALL stated that the HBOC subsidiary "generated 21 percent revenue growth in . . . information technology software" Approximately 16% of this reported revenue was from the fraudulent Data General transaction. McCALL repeated this information in a conference call with financial analysts on April 22, 1999.

McKessonHBOC's Restatement of Financial Statements

84. On April 28, 1999, McKessonHBOC issued a press release announcing that it was investigating accounting irregularities in HBOC-related software sales and that the company would restate its financial results. On the day of this announcement, the share price of McKessonHBOC stock fell more than 40% from the prior day, from \$65.75 to \$34.50, on a volume of 41,625,900 shares. As a result, the value of stock held by McKessonHBOC shareholders fell by more than \$9 billion. McKessonHBOC stock has not closed at a price above \$41.81 since the day of the announcement.

85. McKessonHBOC issued its restated results on July 14, 1999. The restatement included the following adjustments to quarterly revenue and net income for the HBOC portion of the business during the period January 1, 1998 through March 31, 1999:

<u>Quarter Ending</u>	<u>REVENUE</u>			<u>NET INCOME</u>		
	<u>Originally Reported</u>	<u>As Restated</u>	<u>% Overstated</u>	<u>Originally Reported</u>	<u>As Restated</u>	<u>% Overstated</u>
3/98	\$393.1	\$376.8	4.3 %	\$64.9	\$45.6	42.3 %
6/98	\$376.7	\$308.1	22.3 %	\$75.6	\$23.5	221.7 %
9/98	\$399.6	\$330.5	20.9 %	\$83.7	\$16.5	407.3 %

12/98	\$469.0	\$381.0	23.9 %	\$59.6	\$8.5	601.2 %
3/99	\$431.9	\$402.6	7.3 %			

COUNT ONE: 18 U.S.C. § 371 (Conspiracy to Commit Securities Fraud)

86. Paragraphs 1 through 85 are realleged as if fully set forth here.

87. From in or about and between December 1997 to on or about April 27, 1999, both dates being approximate and inclusive, within the Northern District of California and elsewhere, the defendants

CHARLES W. McCALL,
ALBERT J. BERGONZI,
JAY LAPINE,

and others, knowingly and willfully conspired to commit offenses against the United States, namely, (a) fraud in connection with the offer and sale, and the purchase and sale, of HBOC and McKessonHBOC securities, in violation of Title 15, United States Code, Sections 78j(b), 78ff, 77q(a), and 77x and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) false and misleading statements and omissions of material fact in reports and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; (c) false and misleading statements of material fact in reports and documents required to be filed under the Securities Act of 1933, in violation of Title 15, United States Code, Sections 77q(a) and 77x; (d) falsified books, records, and accounts of HBOC and McKessonHBOC, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1; and (e) circumvention of HBOC and McKessonHBOC's internal accounting procedures and system of accounting controls, in violation of Title 15, United States Code, Sections 78m(b)(2)(B) and 78ff, all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

88. In furtherance of the conspiracy and to effect the objects thereof, in the Northern District of California and elsewhere, the defendants committed and caused others to commit the acts described in paragraphs 17 through 83 of this Second Superseding Indictment, which are

1 hereby realleged as if fully set forth here.

2
3 89. The defendants committed and caused others to commit the following additional
4 overt acts in furtherance of the conspiracy, in the Northern District of California and elsewhere:

- 5 • In or about March 1998, McCALL, BERGONZI, LAPINE, and another HBOC
6 officer met and discussed devices for inflating HBOC's revenue and earnings;
- 7 • On or about May 11, 1998, HBOC's chief financial officer signed a Form 10-Q
8 that was filed with the SEC;
- 9 • On or about August 3, 1998, HBOC's chief financial officer signed a Form 10-Q
10 that was filed with the SEC;
- 11 • On or about September 11, 1998, LAPINE faxed a side letter to UPMC extending
12 the right to cancel the June 30, 1998, software license agreement until September
13 25, 1998;
- 14 • On or about October 26, 1998, HBOC issued a press release announcing that it
15 had entered into a contract with Staff Builders;
- 16 • On or about October 28, 1998, HBOC's chief financial officer signed a Form 10-
17 Q that was filed with the SEC;
- 18 • On or about January 4, 1999, an HBOC officer sent a fax to GECC suggesting a
19 misleading response to an Arthur Andersen audit confirmation request;
- 20 • On or about April 2, 1999, McCALL telephoned the chief executive officer of
21 Data General to discuss the pending contract negotiations for a contract for
22 quarter ending March 31, 1999;
- 23 • On or about April 3, 1999, LAPINE told Data General employees that HBOC
24 required the software reseller agreement to be backdated to March 31, 1999, and
25 the agreement for HBOC to purchase hardware to be dated in April 1999;
- 26 • On or about April 5, 1999, LAPINE faxed a revised reseller agreement to Data
27 General;
- 28 • On or about April 22, 1999, McCALL spoke with the CEO of Data General and

requested that Data General agree to rescind McKessonHBOC's repurchase obligation;

- On or about April 22, 1999, McKessonHBOC issued a press release describing preliminary financial results for the fiscal year ended March 31, 1999;
- On or about April 22, 1999, McCALL participated in a conference call with securities analysts in which he described the company's financial results for the fiscal year ended March 31, 1999.

All in violation of Title 18, United States Code, Section 371.

1 COUNT TWO: 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. §240.10b-5, 18 U.S.C. § 2 (Fraud in
2 Connection with Purchase and Sale of Securities)

3 90. Paragraphs 1 through 85 are realleged as if fully set forth here.

4 91. From in or about and between December 1997 to on or about April 27, 1999, both
5 dates being approximate and inclusive, within the Northern District of California and elsewhere,
6 the defendants

7 CHARLES W. McCALL,
8 ALBERT J. BERGONZI,
JAY LAPINE,

9 and others, knowingly and willfully, directly and indirectly, by the use of the means and
10 instrumentalities of interstate commerce, the mails, and the facilities of national securities
11 exchanges, used and employed manipulative and deceptive devices and contrivances in
12 connection with the purchase and sale of securities issued by HBOC and McKessonHBOC, in
13 violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices,
14 schemes, and artifices to defraud; (b) making and causing HBOC and McKessonHBOC to make
15 untrue statements of material fact and omitting to state facts necessary in order to make the
16 statements made, in light of the circumstances under which they were made, not misleading; and
17 (c) engaging in acts, practices, and courses of business which operated and would operate as a
18 fraud and deceit upon purchasers of HBOC and McKessonHBOC securities.

19 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 18,
20 United States Code, Section 2.

1 COUNT THREE: 15 U.S.C. §§ 78j(b) and 78ff (False SEC Filing for Quarter Ended March 31,
2 1998)

3 92. Paragraphs 1 through 27 and 84 through 85 are realleged as if fully set forth here.

4 93. On or about May 11, 1998, within the Northern District of California and elsewhere,
5 the defendant

6 ALBERT J. BERGONZI

7 in a Form 10-Q filed with the SEC for the period ended March 31, 1998, did knowingly and
8 willfully make and cause HBOC to (a) make untrue statements of material fact and (b) omit to
9 state material facts necessary to make the statements made not misleading.

10 94. Specifically, the Form 10-Q:

11 a. Falsely reported software sales revenue that was generated through the
12 deliberate use of improper accounting practices;

13 b. Omitted to disclose that side letters to sales contracts and recourse agreements
14 with GECC had been deliberately withheld from company books and records and from Arthur
15 Andersen at the direction of top management, namely, McCALL, BERGONZI, LAPINE, and
16 others;

17 c. Falsely reported operating expenses that had been reduced, and net income that
18 had been inflated, as the result of fraudulent entries to company books and records; and

19 d. Omitted to disclose that those fraudulent entries were made in the books and
20 records of the company.

21 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code
22 of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

1 COUNT FOUR: 15 U.S.C. §§ 78j(b) and 78ff (False SEC Filing for Quarter Ended June 30,
2 1998)

3 95. Paragraphs 1 through 19, 28 through 41, and 84 through 85 are realleged as if fully
4 set forth here.

5 96. On or about August 3, 1998, within the Northern District of California and
6 elsewhere, the defendants

7 CHARLES W. McCALL,
8 ALBERT J. BERGONZI, and
9 JAY LAPINE,

10 in a Form 10-Q filed with the SEC for the period ended June 30, 1998, did knowingly and
11 willfully make and cause HBOC to (a) make untrue statements of material fact and (b) omit to
12 state material facts necessary to make the statements made not misleading.

13 97. Specifically, the Form 10-Q:

14 a. Falsely reported software sales revenue that was generated through the
15 deliberate use of improper accounting practices;

16 b. Omitted to disclose that side letters to sales contracts and recourse agreements
17 with GECC had been deliberately withheld from company books and records and from Arthur
18 Andersen at the direction of top management, namely, McCALL, BERGONZI, LAPINE, and
19 others;

20 c. Falsely reported operating expenses that had been reduced, and net income that
21 had been inflated, as the result of fraudulent entries to company books and records; and

22 d. Omitted to disclose that those fraudulent entries were made in the books and
23 records of the company.

24 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code
25 of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

1 COUNT FIVE: 15 U.S.C. §§ 78j(b) and 78ff (False SEC Filing for Quarter Ended September
2 30, 1998)

3 98. Paragraphs 1 through 19, 42 through 56, and 84 through 85 are realleged as if fully
4 set forth here.

5 99. On or about October 28, 1998, within the Northern District of California and
6 elsewhere, the defendants

7 CHARLES W. McCALL,
8 ALBERT J. BERGONZI, and
9 JAY LAPINE,

10 in a Form 10-Q filed with the SEC for the period ended September 30, 1998, did knowingly and
11 willfully make and cause HBOC to (a) make untrue statements of material fact and (b) omit to
12 state material facts necessary to make the statements made not misleading.

13 100. Specifically, the Form 10-Q:

14 a. Falsely reported software sales revenue that was generated through the
15 deliberate use of improper accounting practices;

16 b. Omitted to disclose that side letters to sales contracts and recourse agreements
17 with GECC had been deliberately withheld from company books and records and from Arthur
18 Andersen at the direction of top management, namely, McCALL, BERGONZI, LAPINE, and
19 others;

20 c. Falsely reported operating expenses that had been reduced, and net income that
21 had been inflated, as the result of fraudulent entries to company books and records; and

22 d. Omitted to disclose that those fraudulent entries were made in the books and
23 records of the company.

24 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code
25 of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.
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1 COUNT SIX: 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5) and 78ff; 17 C.F.R. § 240.13b2-1; and 18
2 U.S.C. § 2 (Falsifying Books, Records, and Accounts)

3 101. Paragraphs 1 through 85 are realleged as if fully set forth here.

4 102. From in or about and between December 1997 to on or about April 27, 1999, both
5 dates being approximate and inclusive, within the Northern District of California and elsewhere,
6 the defendants

7 CHARLES W. McCALL,
8 ALBERT J. BERGONZI, and
9 JAY LAPINE,

10 knowingly and willfully, directly and indirectly, falsified and caused to be falsified books,
11 records, and accounts of HBOC and McKessonHBOC.

12 All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and
13 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1, and 18 U.S.C. § 2.
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1 COUNT SEVEN: 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5) and 78ff; 18 U.S.C. § 2

2 (Circumventing Internal Accounting Controls)

3 103. Paragraphs 1 through 86 are realleged as if fully set forth here.

4 104. From in or about and between December 1997 to on or about April 27, 1999, both
5 dates being approximate and inclusive, within the Northern District of California and elsewhere,
6 the defendants

7 CHARLES W. McCALL,
8 ALBERT J. BERGONZI, and
9 JAY LAPINE,

10 knowingly and willfully circumvented and caused others to circumvent the system of accounting
11 controls required to be devised and maintained to provide assurances that transactions of HBOC
12 and McKessonHBOC were recorded as necessary to permit preparation of financial statements in
13 conformity with GAAP.

14 All in violation of Title 15, United States Code, Sections 78m(b)(2)(B), 78m(b)(5) and
15 78ff, and 18 U.S.C. § 2

1 COUNT EIGHT: 15 U.S.C. §§ 77q(a) and 77x; 18 U.S.C. § 2 (False Registration Statement)

2 105. Paragraphs 1 through 63 and 84 through 85 are realleged as if fully set forth here.

3 106. On or about November 13, 1998, within the Northern District of California and
4 elsewhere, the defendants

5 CHARLES W. McCALL,
6 ALBERT J. BERGONZI, and
7 JAY LAPINE,

8 unlawfully, willfully, and knowingly, in a registration statement filed by McKesson and HBOC
9 under the Securities Act of 1933 with respect to stock to be issued in conjunction with a merger,
10 did make and cause to be made untrue statements of material fact, and omit to state and cause to
11 be omitted material facts required to be stated therein and necessary to make the statements made
12 not misleading, including:

- 13 • The merger agreement incorporated by reference into the registration statement
14 included a section titled “Representations and Warranties of HBO.” That section
15 contained the materially false representation that HBOC’s financial statements
16 filed with the SEC since 1996 “comply as to form, as of their respective dates of
17 filing with the SEC, in all material respects with applicable accounting
18 requirements and the published rules and regulations of the SEC with respect
19 thereto, [and] have been prepared in accordance with GAAP”
- 20 • Each of the Forms 10-Q incorporated into the registration statement contained
21 materially false statements regarding HBOC’s revenue and earnings for the first
22 three quarters of 1998.
- 23 • The *pro forma* condensed consolidated financial statements of income for HBOC
24 for six month periods ending September 30, 1998, and twelve month periods
25 ending March 31, 1998, included both revenue and income recorded in violation
26 of GAAP.

27 All in violation of Title 15, United States Code, Sections 77q(a) and 77x; and Title 18,
28 United States Code, Section 2.

COUNTS NINE through ELEVEN: 18 U.S.C. §§ 1341, 1343, 1346, and 2 (Mail and Wire Fraud; Aiding, Abetting, and Willfully Causing)

107. The allegations of paragraphs 1 through 85 are realleged as if fully set forth here.

108. On or about the following dates, within the Northern District of California and elsewhere, for the purpose of executing the foregoing scheme to defraud, the defendant
ALBERT J. BERGONZI
did (i) place and cause to be placed in an authorized depositary mail for delivery by (a) the United States Postal Service and (b) private or commercial interstate carrier; and (ii) did transmit and cause the following to be transmitted by wire communication in interstate and foreign commerce:

<u>Count</u>	<u>Date</u>	<u>Point of Origin</u>	<u>Point of Receipt</u>	<u>Communication</u>
9	3/30/99	Atlanta, GA	Oracle Corp. Redwood Shores, CA	telephone conference call
10	3/30/99	Atlanta, GA	Oracle Corp. Redwood Shores, CA	facsimile
11	3/31/99	Atlanta, GA	Oracle Corp. Redwood Shores, CA	software sent via Interstate carrier

All in violation of Title 18, United States Code, Sections 1341, 1343, 1346 and 2.

DATED:

A TRUE BILL.

FOREPERSON

KEVIN V. RYAN
United States Attorney

CHARLES B. BURCH
Chief, Criminal Division

(Approved as to form: _____)

AUSA John H. Hemann
AUSA William H. Kimball